

# How to Write an Agency / Client Contract



# Do You Want to Write Rock Solid Contracts with Your Client?

How solid are your agency/client contracts?

If there was even the slightest bit of hesitation in your answer then you're putting both your agency and your clients at risk.

Contracts are not only the formal place where expectations are recorded, but the guiding document in case things go wrong. One hole in your contract could not only cost you a relationship, but a whole lot of money.

This is one of those cases where you need to truly hope for the best, but prepare for the worst. As an agency, it's your job to do what any other business is charged with—doing everything you can to protecting your business.

So what should a contract be? What should it contain?

Here are the essentials:

**READ 5 WAYS TO TRANSITION A LEGACY CLIENT RELATIONSHIP**

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# Don’t Use Legalese

Legalize doesn't make a contract more secure, and it doesn't impress anybody. In fact, legalize can make things a whole lot worse.

Legalize not only will frustrate your clients, but will cause confusion for both of you. This can lead to intervention from a law mediator, which could easily be avoided if things were clearly stated.

**Be As Specific As Possible**

Make your terms crystal clear. Ambiguity can only work against both you and your clients.

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# Start By Citing Both Parties

Every contract should start by introducing both parties by their legal names and legal business addresses. This will prevent any misidentification and binds the right businesses to the terms.

You can add abbreviations to be used throughout the contract—ex: "company" for you and "client" for your client—but only after you cite the proper names first.

If you don't do this, the contract isn't legally official.

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# Specify Duration and What Signifies the End

When does the contract begin? Be specific with the date. In this case, the end date would signify the completion of the contract.

When does the contract end? For a retainer, a contract will end of a specific date. For a project, however, it might be a bit different. Since projects take varying periods of time, nailing an end date can be a bit tricky.

For these cases, it's wise to cite that the contract will conclude when the deliverables are completed.

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# Clearly Define the Scope of Work

This is the biggest place contracts go bad.

Hopefully you've detailed your activities with the client during the sales process. If you went into enough depth there, it could be as simple as copy and pasting.

If you weren't incredibly specific, you'll need to get specific here. In the scope of work, talk about volume. How many templates are you creating? How many pages are being implemented? How many rounds of revisions are included, and what happens when that limit is reached?

Leaving the scope of work vague leads to unintentional scope creep. The more specific you can be, the better off you and your clients will be.

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# Talk About Additional, Out of Scope Work

This is another item that needs addressed. What happens if the client requests something outside the scope of work? Address how those requests are treated.

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# Identify Budget and Payment Terms

This is another area to be specific and intentional about. Before you write the contract, talk with your client about what's possible for payment frequencies. For a retainer, it's customary for payment to occur once per month. For a project, it's customary for payment to happen 50-percent up front and 50-percent upon completion.

**What Happens If Payments Are Late?**

This is the place to talk about how late payments are treated. Every industry from construction to appliance talks about late payments. As agencies, we can't be any different. A common payment timeframe is a Net 21. This means the client has 21 days to pay after receiving the invoice.

Standard terms are a three-percent late fee for late payments. It's important to discuss this. Although a late fee of three-percent might not equal much, it's enough of a notation to encourage on-time payments. As an agency, you have the choice to waive late fees as a kind gesture, but it's also important to have this in place in case someone is chronically late.

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# Address Refund Requests

One of the biggest mistakes I made early in my agency career was not addressing refund requests. Typically, agencies don't really have to deal with refund requests.

Again, we need to treat ourselves like a true business and think through all of the possibilities. The opportunity for refund requests always exists, and if we don't address them, we're in trouble.

**Some Refund Request Terms**

One thing you want to try to avoid is a refund request that occurs long after work is completed. I typically recommend that no refunds will be distributed after work is completed and final payment is received. If you don't talk about this, who's to say that a client couldn't request a refund for any reason after the fact?

Yes, you've delivered, but if you don't specify terms, it's left up to the imagination. It might take legal intervention, which is a headache. Do yourself a favor and cover this base.

You have to think beyond this situation, however, which may very well come up. Another is what happens if the client terminates halfway through your agreement. How are refund requests handled on past payments?



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# Have a Termination Clause

It's important to always offer a way out for both parties. Sometimes, things just don't work out. Maybe one side or the other isn't performing. In other cases, maybe the organization hits some financial hardships and has to conclude the agreement a bit early.

**How Is Termination Engaged?**

Talk about how termination is initiated. I recommend citing that termination notice must be delivered at least seven days in advance via email or letter. Informal phone conversations, chat messages and texts shouldn't be an acceptable means of notice.

**What Happens to Further Payments in This Case?**

It's important to address what happens in a variety of termination situations. If the client terminates the agreement before the project is completed, what do they get from the partnership to take with them? Do they access the final files, or not?

It's worth noting that in the case of termination, only outstanding work must be compensated and that further payments will halt. It's just another way of clarifying what happens once the contract concludes.



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# Have a Breach of Contract Clause

In my years in agency life, I've only ever been faced with one breach of contract. Unfortunately, I didn't specify what constitutes a breach of contract and I experienced a major loss.

Breach of Contract is such an important notation to make. It's just another area of clarity and communicating specific expectations.

One of the major causes for a breach of contract should be if a client engages with another agency to accomplish the exact same work without terminating your agreement first.

You also should address the consequences of a breach of contract.

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# Discuss Copyrights and Who Hold Them

This is an area that a lot of clients will be interested in.

At the end of the day, who owns your work?

You can go one of two ways—the client can retain the copyright, or you can lease the copyright to the client (which is weird and I don't support).

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# Non-Disclosure Agreement (NDA)

Privacy couldn't be more important for both you and your clients. A built-in NDA will simply cite that you're not going to talk about your client's private business without their permission. In turn, they offer you the same treatment.

- **One additional note:** I can't stress how important it is to also build in NDAs into your employee/contractor agreements. If your agency isn't allowed to talk about unreleased news about your clients, and your team doesn't understand this, they could spill the beans on a project and get everyone in trouble. Client secrets should be kept within the agency's circle of trust. On-going projects should be kept there too until they're completed.

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# Indemnity

What happens if a negative situation occurs as a result of one of the assets you've created? Maybe you didn't even necessarily cause it. Maybe the website causes a lawsuit because your client's marketing manager accidentally botched the messaging. Are you responsible? Can that lawsuit go back to you?

Simply stated, indemnity in the legal sense keeps you off the hook for damages.

Here's the typical statement I include for indemnity:
"**[Client Name] agrees to indemnify and hold harmless [Agency Name] of and from any and all claims, demands, losses, causes of action, damage, lawsuits, judgments, including attorneys' fees and costs, to the extent caused by or arising out of or relating to the work of [Agency Name].**"



# Consult Legal Help Before Using Contracts

This is a laundry list of items to consider in your contracts.
Before moving forward with any legal document, make sure you have legal help review it.

They might notice something you're missing or might have something game-changing to add.

Happy contracting!



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